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THE TROUBLE LIGHT RECALL

This is the story of the Consumer Product Safety Commission's recall of a trouble light made by A.K. Electric Company. Reports on the investigation of a death involving a trouble light, and the subsequent labeling of the light by the commission as an "imminent hazard" give the reader an insight into the administrative and engineering processes of the CPSC.

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THE TROUBLE LIGHT RECALL

The declaration that a consumer product is "imminently hazardous" is the most serious condemnation the Consumer Product Safety Commission is empowered to make. Such a declaration gives the commission dual emergency powers: immediate public notification of the hazard even before a manufacturer can reply, and direct litigation in federal court to force whatever action the commission deems necessary for the public safety. The commission has decided to use this power only once -- against a trouble light made by A.K. Electric Company of Brooklyn, New York.

The story of that decision raises questions about the administrative and engineering processes within the commission that made the decision against A.K. Electric inevitable. What's more, the case set precedents that may severely cripple the commission's ability to protect the public. Although the mass media were forced into helping publicize a recall of the lights, fewer than 10 percent of A. K. Electric's lights were actually returned to the manufacturer; millions of lights by other makers, with similar designs, were never asked for at all. Perhaps that's not surprising: the lights, while probably a hazard, were probably not as dangerous as the Consumer Product Safety Commission claimed, and the commission's analysis of exactly how the light killed is open to serious question.

PIRATING A DESIGN

The "imminently hazardous consumer product" was conceived at a trade show in 1972 attended by Jack Meltzer, president of A.K. Electric. At the show, Meltzer saw a trouble light manufactured by the Miller Electric Company, and thought it would fit his product line. (See Exhibit 1 for Chronology; Exhibit 2 for list of people mentioned in this case).

The attractive feature of the Miller product for Meltzer was its cheap handle, which, instead of being hard rubber, as in A.K.'s product at that time, was made of polyvinyl chloride in a simple lightweight design. Meltzer says he then contacted Dumar Industries, a Brooklyn plastics molding shop, and asked the firm to copy the Miller product.

On May 16, 1973, A.K. got its first batch of handles from Dumar. During the next six months, shipments totaled 180,000 handles, each of which Meltzer's firm combined with

a switch and bulb socket, receptacles, and a metal hood with a hinged wire grid to enclose the bulb. The hood had a metal band at the bottom that fit around the handle beneath a shallow lip, inside of which was the bulb socket. Twenty feet of cord and a male plug completed the product. See Exhibit 3 for picture of a typical trouble light with hard rubber handle.

The lights were sold by A.K. at prices ranging from 95 cents to \$1.29 wholesale. Some 35 wholesale distributors and major retailers each bought more than a thousand of the lights; smaller orders eventually sent them to thousands of retail outlets in virtually every state.

The lights were marked with neither brand name nor manufacturer. And at no point of production, from conception to the launching of the product into the stream of national commerce, had it occurred to anyone either to consult an engineer or to test it for safety.

After the last of his lights were gone for the season, it was six months before Meltzer heard of them again. On July 22, 1974, he got a call from James Hosmer of what was then called the "Section 15 Group" (after Section 15 of the Consumer Product Safety Act; see Exhibit 4) of the Consumer Product Safety Commission. Hosmer told Meltzer that his trouble light was likely to be declared an "imminently hazardous consumer product" by the commission.

This was not the first time Meltzer had gotten bad news from the federal government. The Environmental Protection Agency had taken action against one of his company's insect control devices. Consumer's Union petitioned the CPSC to ban another of his products, an unusual table lamp. And worst of all, in late 1973 the commission had ordered a "substantial hazard" recall of another A.K. product, the "Little Wonder" TV antenna, because, the CPSC said, it presented a shock hazard. (See Exhibit 4 for definitions of various degrees of hazards under the law.)

Meltzer made a change in the antenna. The commission said it was no longer a hazard. Meltzer geared up production; his biggest client, a mail-order house, printed advertising. Then the commission apparently decided that it didn't trust its own engineering, told Meltzer he had to take the antenna off the market again, and turned the problem over to the National Bureau of Standards. NBS took seven months to decide that the antenna was safe.

Having already lost a great deal of money, Meltzer and the mail-order house geared up again. Then Richard Simpson, chairman of the commission, held a news conference in New York during which -- having failed to keep informed of the status of the antenna -- he declared it to be a hazard. Despite a provision in the Consumer Product Safety Act that required the chairman to hold another news conference to correct his statement, and despite requests from Meltzer that he do so, Simpson didn't. Meltzer says the commission told him that it had made a mistake, but refused to go further.

This error by the commission virtually killed the "Little Wonder" as a volume item, although Meltzer still produces small quantities. The Little Wonder story was similar in many respects to the trouble light case. It has a similar main character: a product that, according to the commission, presented a clear hazard. And it raised the same questions: Is the commission competent to identify and regulate the nation's output of hazardous products? Indeed, can the commission even define what an "imminently hazardous consumer product" is? The trouble light story suggests that the answers may all be no.

The story began on May 29, 1974. The CPSC got a telephone complaint on its "consumer hotline" claiming that Robert Edward Jones, of Lauderdale-by-the Sea, Florida, had been electrocuted by a defective trouble light. A month later the commission sent Consumer Safety Officer G. Brent Bradford to make what it calls an "In-Depth Accident Injury Investigation." In its brief for the court, the commission described Robert Jones's death in this way:

"The field inspection revealed that on October 24, 1973, the 41-year-old male victim had entered a crawl space over one of his apartments to check hot water pipes. He was discovered in the attic by his wife, expired, lying on his stomach across two water pipes and three electrical wires. His right hand was clenched tightly to one of the water pipes. A trouble light, which was plugged into an electric outlet in the bedroom below the crawl space, was hooked onto one of the water pipes. According to the electrical inspector on the scene, the electrical wiring in the crawl space was in good condition. The electrical inspector also indicated that there was the possibility that if the trouble light had a short circuit and the victim had been perspiring while lying across the water pipes, he could have been electrocuted. . . .

"The Report of Investigation by the Medical Examiner stated that the victim's manner of death was by 'Voltage Electrocution.'"

On July 19 the commission's Bureau of Engineering Science, after examining a trouble light taken from the same store where Jones had bought his light, issued the following report, which was entered into the record of the court:

"Based upon my examination and evaluation of the subject light cord," wrote Alfred B. Castle, Jr., director of the commissions's Division of Engineering Laboratory Operations, "I determined that, due to the poor design of the product, any consumer using the cord-light in a normal manner subjects himself to unreasonable risk of serious injury or death. My determination was based on the fact that the plastic handle of the cord-light is extremely pliable, and in the normal use of the product, a consumer would place a thumb and/or finger over the receptacle provided for use as an extension cord. *Very slight pressure on the handle* (emphasis added) causes the user to contact either prong of the receptacle. The severe shock hazard exists between the prong, at a potential of 110 volts, and any convenient ground, such as a water pipe, gas pipe, etc."

Based upon these reports, on July 25 the commission found the trouble light to be "imminently hazardous."

In meeting with the commission on July 31 and August 1, the product vendors (A.K. and the 35 major distributors and retailers) were told that they would have to cease manufacture of the light and remove it from commerce and consumer possession by recall, refund, and replacement. The vendors agreed to do this.

The commission then said that the vendors would have to pay for a mass media advertising campaign as well, to warn the nation of the hazard and inform the public of the recall. The commission plan included prime-time television spot announcements and ads in 85 percent of the nation's newspaper circulation. The vendors agreed to pay for a national public relations campaign (and, in fact, launched it immediately), but not for the high cost of mass advertising.

On August 9, adamant in its insistence on the paid advertising program, the commission invoked its litigatory powers under Section 12 of the Consumer Product Safety Act and went to court to force the vendors to follow its orders. On August 29 U.S. District Court Judge George Hart agreed with the commission that the trouble light was an imminent

hazard. But, while issuing a permanent injunction against the light's sale, Hart ordered the vendors only to do everything they had already volunteered to do, and refused to order the paid advertising campaign demanded by the commission. Instead, Hart personally called executives of the major television networks, successfully urging them to cover and report a demonstration of the trouble light hazard by commission chairman Richard Simpson.

The demonstration featured a life-size two-dimensional male figure (at a negotiating session between the commission and the vendors it had been agreed that the trouble light was a "male" product) with its arm outstretched, thumb in the air. The thumb was connected by a conductor to a grounded light bulb in the figure's chest about where the heart would be (low-voltage electrocution kills by inducing fibrillation of the heart's ventricles).

Simpson, using a trouble light in which the receptacle prongs had been worked out of slots in the handle, strode to the figure and said, "If this were plugged in and I were to touch that and I were to be grounded (bulb goes on), that's the shock situation." The next morning NBC's Pat Thompson said on the Today show, "This light is so poorly designed it can kill a person. Federal officials say a light like this has already electrocuted a man in Florida." That night ABC's nightly news reported, "While the demonstration was more than a little contrived, 170,000 lights are still out there, 170,000 potential killers (Meltzer's estimate was 180,000)."

If the vendors had challenged the trouble light's "imminent hazard" status originally, the records of any challenge proceeding would probably have opened to public view the quality of the commission's evidence. But that challenge never came. As a result, the commission's case up to this point has been unexamined. How clear was the evidence? Was the light inherently unsafe, or had the accident been caused by its misuse?

When a product is brought to the attention of the CPSC as the result of an injury, the initial determination of these questions, and the degree of hazard, if any, is based upon two kinds of evidence: The In-Depth Accidental Injury Investigation Report (called simply the "In-Depth"), and an examination of the product in question. After an initial determination the commission then considers the extent of the product's distribution and consumption.

The In-Depth was assigned to Bradford on June 24, 1974, by telephone, 26 days after the hotline complaint. Bradford,

working out of the Atlanta office of the CPSC, was traveling in Miami at the time on other commission business. It was June 27 before the investigation was begun. Bradford spent one day on it. In his signed report given to the court, and in an interview Bradford says that he talked to two people: the victim's wife, Jane Jones, and the police officer, Robert Walsh. He also says that he picked up a sample light from the Woolco store where Robert Jones had bought the one he had in his attic.

Then, in a 1-1/2-page typed "Narrative," Bradford gives the description of the accident used in the commission's brief, including the electrical inspector's speculation on the connection between the trouble light and the death. Bradford also gives a "product description" in which he says: "The case for the snapswitch and receptacle is an exceptionally soft, flexible plastic. The soft plastic is particularly significant in the handle which is located at the trouble light base. When the normal hand grip is taken on the base, the thumb is located at the receptacle. Slight thumb pressure on the receptacle exposes one of the metal contactors of the receptacle. When a thumb touches a contact, immediate electrical shock will result."

In an interview, Bradford expressed pleasure with his description. After all, the commission's staff engineers had been unable to add anything to his own hazard analysis before presenting it to the commissioners. Bradford was asked if the description was his own. "Yeah, that was mine!" he said enthusiastically. "I feel sort of good about that. That's just the way I saw it. I'm not an engineer or anything, but I thought that was pretty good myself. I guess they must have thought it was pretty good too, because it looks like they used a few of my words."

The truth is that none of the words in the report -- with the exception of a few fabrications and a connecting word or two -- were Bradford's. The sources for the entire Narrative were misrepresented. To the commission by Bradford, and by the commission to the court, it was represented that Bradford had actually talked to Jones's wife and to the policeman, and them only, and upon obtaining a sample of the product had described and identified the hazard himself.

In two separate interviews, however, Jane Jones categorically denied that Bradford or any other representative of the commission had ever contacted her or spoken to her about anything. And in a sworn statement taken by an insurance investigator on August 29, 1974, Officer Robert Walsh said that previous to that date he had not discussed

the details of his investigation with anyone other than his police chief, or spoken with anyone else about the matter. Bradford, in fact, apparently spoke to only one party, Applied Research Lab of Florida, whose hotline complaint had given the case its start.

From Robert Worth, president of the 26-year-old lab, the story behind the complaint and Bradford's report begins to emerge. A month after the accident, Jane Jones went to Eugene Heinrich, a Miami attorney, bringing the trouble light alleged to have been present at the accident. Heinrich called Worth, retained his lab as expert engineering counsel for a possible product liability case, and asked Worth to examine the light and "determine if the light contributed to the accident." Heinrich provided the lab with the light and two others bought at the same store.

On May 29, 1974, the lab completed its seven-page report, concluding: "It is our opinion that the subject trouble light extension cord was responsible for the electric shock." The report defined a hazard and suggested a scenario for the death.

The same day, Worth says he called Heinrich and told him that he felt duty-bound to inform the CPSC of the product's danger. Heinrich -- not surprisingly -- concurred. Sheldon Roe, one of the investigating engineers at applied Research, then called in the complaint on the commission's hotline.

When Bradford began his investigation he came to the lab and discussed the case with Worth, apparently noting down bits of information from the conversation. Worth then gave Bradford a copy of the lab's report, as well as a copy of the police file, which included the report of the investigating officer, the medical examiner, and the electrical inspector. Bradford took his notes and these documents, picked up the light sample -- which happened to be the last one left in the store -- returned to Atlanta, and pieced together his "In-Depth" report.

BUILDING A CASE

The Narrative is the heart of an In-Depth investigation. In writing it, a consumer safety officer must respond to a list of nine questions and then fulfil three descriptive requirements intended to expand upon the responses to the questions. The purpose is to clearly and accurately describe the injury scenario so that the respective roles of the product and the consumer in causing the accident are as

clear as the best evidence allows.

The commission makes a great deal of these reports. Chairman Simpson, in response to a skeptical question from a member of the American National Standards Institute last December, told how an In-Depth had shown that a snowmobile accident reported to the commission had not in fact been the fault of the vehicle but of the driver, whom the investigation showed had been drunk.

In light of the decisive role it had in this case one can only hope that Bradford's investigation is not typical of the In-Depth work upon which the commission normally relies. Of the 750 words in his Narrative, 648 were copied verbatim and unacknowledged from the various original source records which Bradford had gathered. This includes the exact language of the hazard definition and the death scenario. Another 52 words purport to be what Jane Jones said about the condition of her husband before and leading up to the accident, and are, according to her, simply fabricated. Bradford declares, for example, that Robert Jones was not under the influence of any drugs at the time. In fact, he was under constant medication for a thyroid problem. The remaining 50 words of Bradford's report are apparently based on details that Worth mentioned in their conversation.

So the decision as to what the hazard was, and what it wasn't, was essentially made by the expert counsel for Jane Jones in preparation for a product liability suit against the very companies that the commission ended up bringing into court. What's more, Bradford's report withheld from the commission all of the original source documents except the title sheet and diagrams from the medical examiner's report. For example, the electrical inspector's original report said, "The drop light that Mr. Jones was using had been removed from the scene, so I could not examine it to see if it was faulty." Although Bradford paraphrased the inspector's opinion as to the cause of the accident, he omitted the uncertainties of his original report.

The inspector made his report on October 25, the day after the accident. At 9 a.m. the same day, Broward County medical examiner, Dr. Geoffrey Mann told what happened to the light, on the second page of his report: "The police delivered the light to Dr. Mann," he wrote. "The switch receptacle was *broken* (emphasis added), exposing the metal portion of the light bulb and the metal receptacle. There may have been a burn in the metal portion of the bulb socket."

Asked in an interview to elaborate, Dr. Mann said this:
"It was broken. Somebody had busted it. The break wasn't a defect, for example, from the manufacturing. It was a defect because the guy had broken it. It wasn't a natural break. It had to have taken some force to break it. And the guy used it anyway."

Mann's statement is clearly a mixture of observation, interpretation, and opinion. But it does raise serious questions about the cause of the accident. It has at least as much validity as the opinion of the electrical inspector, upon which the commission's legal brief relies to connect the product hazard definition with the death. But Bradford did not include the medical examiner's statement in his report.

But most interesting of all is the testimony of police officer Robert Walsh, who was the first person to enter the attic space, observe Jones's physical relationship to the light, and examine him. In his sworn statement to the insurance inspector, written the day the defendant vendors returned to court in Washington for final disposition of the commission's case, Walsh said:

"I got about three-fourths of the way up into the space and (threw) the flashlight around and I observed the deceased lying on his left side. His right hand appeared to be frozen to a water pipe. Also noted that this extension light, the metal shield was pushed up and the rubber had slid down off the terminals. . . . The light was hanging behind him, he was on his side, his left side, the light was either against the back of his arm or against his left shoulder. The light was not making contact with him at the time. . . . There was no indication that he had the light in his hand. . . . I removed the light from the attic and brought it to the station with me. The only place I can remember seeing a burn was on the left back, in the wing area."

Walsh also noted that the temperature in the attic was 115°F. The medical examiner's report, in diagrams, shows a six-by-four-inch second-degree burn on the back of Jones's left upper arm, with smaller second-degree burns above and below, and two parallel burns two inches long on his left upper back in the wing area. These observations do not support the commission's contention that Jones was electrocuted through his thumb's contact with the light.

Bradford included the diagrams in his report. Yet the CPSC record indicates that nowhere in the process of review in Washington by either the engineering lab, the Office of the

Medical Director, the Section 15 Group, or the Office of the General Counsel was a question raised about the discrepancy between the diagram and Bradford's championing of the receptacle hazard hypothesized by Jane Jones's engineering counsel.

Why didn't Worth, as expert consultant, question the diagram, question the medical examiner about the condition of the light when he saw it, or question the policeman about the condition of the light at the time of death, before defining the hazard and defining a scenario linking that hazard with the death? As to the medical examiner's report, Worth says only, "I don't remember." As to the rest of it, he says, "We are protected by the work product of the lawyer."

What this means in English is that Heinrich delivered the light to Worth in a certain condition and asked only if it could have caused the death. Whether the condition of the light had been altered between the time of death and presentation as evidence was the lawyer's problem, not the engineer's.

Worth says he received the light in one piece. Yet his report dismissed some physical evidence which might have led him to a different conclusion: ". . . the plastic near the bulb guard anchor was slightly deformed. This deformation may have resulted from mild heat such as from a bulb or hot water pipe. The plug cover was also missing; otherwise no damage to the unit was immediately obvious."

When asked about the policeman's and the medical examiner's statements, Heinrich, Jane Jones's lawyer, said, "I have never understood that." He added that the discrepancy in the two reports might have been just "an unfortunate use of words," and insisted that he passed the light on to Worth's lab in the same condition as it had come to him from Jane Jones, and that somebody might have taken it apart somewhere along the line out of curiosity as to how the death was caused.

He did admit that somebody could just as easily have taken a light that was broken apart and put it back together again. In a sense, that is exactly what Bradford's report accomplished for the commission.

When asked if he had seen the actual light that was in the attic, Bradford said: "No, I never did find out what happened to that light. I guess it was destroyed or something." The light, in fact, remains with Heinrich; Bradford should have known from Worth and from the original complaint that it was there. But he never contacted Heinrich.

Hazard or misuse? According to John O. Hayward, a Cambridge, Massachusetts attorney, specializing in product safety and product liability, and president of Personal Injury Research Associates, the necessary elements of a *prima facie* case of negligence under strict liability are these: "First, it must be shown that a product has a defect which presents an unreasonable danger to the user in normal use using due care. Second, it must be shown that the defect was present when the product left the control of the defendant, and was not created by someone later. Third, it must be shown that the specific defect identified by the plaintiff is the defect which actually caused the injury." The negligence complaint filed by Heinrich on behalf of Jane Jones charges that the ability of a user to contact the receptacles with his hand is the defect in the A.K. Electric trouble light, that the defect was there when the light left A.K. (and the retailer, Woolco), and that the "proximate cause" of the death of Robert Jones was his hand's making contact with the receptacle, causing his electrocution.

Despite clearly contrary evidence, both Bradford and Heinrich chose to adopt not only the hazard definition but also the death scenario developed by engineers in a lab who were also ignoring available contrary evidence. Why? Could the reason be that their main objective was to build the best possible case against the trouble light's manufacturer?

Why involve a federal agency in a local case in the first place? The timing of Heinrich's suit is significant. The lab's report and its complaint to the commission emerged on the same day, May 29. According to Herbert Greenstone of Newark, New Jersey, governor of the Association of Trial Lawyers of America and vice chairman of the American Bar Association's Products, General Liability, and Consumer Law Committee, normal strategy for a trial lawyer in a liability action involving a regulated good or service -- the crash of an airliner regulated by the FAA, for example -- is to let the agency make its finding of fact and then "postulate his theories of liability on the finding of the agency."

Heinrich says he filed his complaint around the end of August; Judge Hart handed down the final order of imminent hazard on August 29. Clearly, Heinrich was waiting for Hart's decision. It's one thing to go to court with a familiar household item that seems about as dangerous as any other domestic lamp. It's quite another thing to go to court with a government-certified and nationally advertised killer -- particularly if you provide the definition and the scenario for all of this yourself, and accomplish it all with a toll-free telephone call.

What could the commission's motive be in building a case against this light? First, the enforcement and public relations wings of the commission's staff know their constituency is the consumer movement. There are no places for those who are uncomfortable among missionaries. Second, the regional offices of federal agencies maintain very large antennae tuned closely to the expectation frequencies of their home agencies in Washington.

Part of the reason must also be explained in personal terms. Brent Bradford is a 25-year-old biology major at a low pay grade of government service. In a working atmosphere of mission and true belief, Bradford meets the president of an engineering lab who is not only the original complainant, but who also hands him a report that provides an expert's hazard definition and scenario for the death. Where is there any incentive for Bradford, at his level, to challenge Worth? Where is the incentive to search out the best evidence?

BUILDING AN EMPIRE

Bradford's "In-Depth" report limited and confined the commission's understanding of the death of Robert Edward Jones, the relationship of the trouble light to that death, and the definition of the trouble light hazard. His report met the minimum needs of each level of review and decision making, right through to the commissioners themselves. In short, the In-Depth defined the limits of everything the commission did in this case.

This result could have been expected. Robert Worth well knew the attitudes of the commission's engineers who were about to receive his hazard definition and death scenario. "We know those fellows pretty well up there," said Worth. "I've sat in a lot of meetings and committees and so forth, and they were just waiting for the right thing to come along, and this one was opportune. I know that's why they put so much emphasis on it."

The case was assigned to James Hosmer and Bill Kitze of the CPSC's Section 15 Group, which had recently been set up within the commission's Bureau of Compliance to handle both "substantial hazards" and -- if one ever came along -- an "imminent hazard." Hosmer was 27 and had just joined the commission. He had a B.S. in chemical engineering and had three years' industrial experience before coming to the government. In September of this year (1975) he will begin his third year of law school at American University in Washington. Kitze was a third year law student at the time of this case and has now completed his degree. Together they

were responsible, along with Carl Blechschmidt, head of the group, for the administrative initiatives that blossomed into a full-fledged "imminent hazard" declaration.

In an interview, Hosmer described the atmosphere awaiting Bradford's report: "It's really funny, all the little political things that were going on at the time. The group was just beginning to make noise about how it really ought to be an independent office. And a case like this -- you know, honchoed correctly so to speak -- could make a case that there was a need for that type of autonomy. That may be one of the reasons that we wanted to bring it to the attention of people so quickly. And not long after the case we began to make more noise, because now we had a case as justification for having an autonomous group. And all of this came into play."

The Bureau of Engineering Science Lab (BESL) and Section 15 each got a copy of Bradford's report on July 11. By the time the sample light arrived in Washington six days later, Bradford's hazard definition and death scenario were in full command. These doubtful pieces of "evidence" gained more authority in the hands of those without knowledge of the uncertainties of which Worth and Bradford were aware.

Hosmer: "You might be able to build a case that it was not an imminent hazard. Why didn't we? Well here we had a death! Section 15 Group could have said it doesn't really matter how the death occurred, there is a hazard here of some degree of seriousness and we have to decide what it is. But we felt under the gun because of the death.

"So there was a question whether to go Section 15 ("substantial hazard") or Section 12 ("imminent hazard"). How big a hazard is this? Well, I wanted to test the commission on Section 12, whether they had the guts to use it and go into court. I pressed for Section 12 for the test."

Meanwhile the sample had arrived in the engineering division. George Annikes, head of Special Engineering Studies, was responsible for managing the hazard analysis. "We try to be objective," he said, "but sometimes you have to be subjective. This was the case with the trouble light. How soft is soft? There are no rules. The only objective test we could do was a dynamometer test to get an idea of hardness, and some force tests. These didn't mean a hell of a lot, but they were numbers, anyway. Outside of these tests the only thing to do was grab it."

And so it went. When all the grabbing was over, said Annikes, "we said it was an extremely dangerous shock hazard. That's

very subjective, I can't put a number on that. We thought it was really bad. We thought it was a killer."

During an interview in the lab, Annikes "grabbed" an A. K. Electric trouble light, held it on his hand, and pushed in with his thumb on the receptacles. With enough pressure (though the exact amount is uncertain) the handle material tore. "You see, I can get a shock here," said Annikes. "that's the imminent hazard."

But even then the receptacles' prongs had not become "exposed" and his thumb was not in actual contact with them in the way the commission had described the hazard officially. When I pointed this out, Annikes said, "Well, it's pretty close though. Some were worse than others."

I picked up another trouble light of a different brand -- the Gem -- and pointed out that my thumb came just as close to the receptacles as on the A. K. light. "Well, yes," he said. "You could say that's as bad a hazard perhaps." He added, "As I said, it's subjective." See Exhibit 5 for added examples of subjectivity.

THE HAZARD GROWS

It was in terms of a receptacle hazard and only a receptacle hazard that A.K. Electric's trouble light was officially declared an "imminent hazard" by the commission on July 25. The engineering report forming the basis of the decision was a description of the "grab" test. Its only operative words are, "in the normal use of the product, a consumer would place a thumb and/or finger over the receptacle provided for use as an extension cord. Very slight pressure on the handle causes the user to contact either prong of the receptacle."

No mention of "pretty close." No mention of any necessity to tear the material of the handle. No work-up from numbers for such things as normal gripping pressure or anthropometric data. No definition of the term "very slight." (Bradford's report, using Applied Research Lab of Florida's words, first said "slight" and later "medium.") No mention that "some were worse than others." No mention of any other aspect of the light as being hazardous or contributing to the "imminence" of the light as a hazard.

Because the engineering report was neither thorough nor complete, a change had to be made in the hazard definition in midstream, creating a contradictory record in court and leaving the commission open to serious challenge. The commission's

brief, filed in court on August 9, mentioned, not only the handle hazards, but also the lack of strain relief at both the plug and socket of the light, and that after the bulb is screwed into the socket, part of the bulb base remains exposed.

These additions were made without an official amendment of the original July 25 imminent hazard finding by the commission, nor any further supporting evidence. (Both are necessary for an admissible action under Section 12 of the 1972 law). Suddenly it was the shock hazards -- in plural -- that made the product "imminent" in its danger, according to the brief. Annikes indicates what a challenging attorney would have found behind this new definition: "These things don't characterize a hazardous product, just poorly designed," he said. "We told Carl Blöschschmidt about them, and he decided that since A. K. was going to have to fix it anyway we might as well throw them in."

INTEREST IN SIMILAR LIGHTS SHRINKS

The commission's third criterion -- in addition to the "In-Depth" and the light sample -- for arguing the imminent hazard of A.K. Electric's light was that there were so many in commerce. But the number of A.K. lights was small in comparison to the number of lights of similar design made by other manufacturers.

At the first meeting between the commission and the vendors on July 31, A.K. president Meltzer arose early, waving a sample of the Miller Electric product that he had originally copied. Meltzer declared that since 1964, millions of them had been sold. He asked the commission why it didn't go after all the lights with the same design and hazard as his, and submitted the sample to the commission.

On August 12, commission lawyers David Schmeltzer and Carl Gershenow briefed the commission's Product Safety Advisory Council -- representing industry, government, and consumers -- on the trouble light case. Schmeltzer began by demonstrating the "grab" test. To put the light on, you have to press this to make contact," he said, demonstrating as he went along. "The problem is that because the plastic is so soft, you very readily can press the metal contact in the plastic material; so that if you press here, and if you are using the light in a situation where you are grounded, it is very possible that you can get killed. As a matter of fact, someone was killed using a light manufactured by the A.K. Electric Company."

E. E. Carlton, principal safety engineer for the electrical unit of the San Francisco Division of Industrial Safety, asked, "Is this the A.K. product?" Schmeltzer replied, "This is not the A.K. product."

Carlton: "You don't have an A.K. product?"

Schmeltzer: "No, the one we have is at court. But this is close enough to show you the problem."

Pressed further on this point the lawyers began to get testy.

Carlton: "Daniel Woodhead makes this in a yellow product."

Schmeltzer: "We are talking about A.K."

The committee members wouldn't give up. While the CPSC lawyers attempted to impress upon them that the real issue was paid advertising by industry, or "efficient defect notification," as it was euphemistically put, committee members simply couldn't take their minds off the selective justice that the commission seemed to be perpetrating. Finally Gershenow said, "I think we should bear in mind that the light you have here, sir, is not the 'trouble light' in question. It just portrays the problem that makes the light an imminent hazard. Indeed, the light that is considered an imminent hazard has a much more flexible handle than this one before you now. The one that you have before you now takes a little bit of pressure to expose the metal of the female receptacle. The one before the court takes *no pressure at all*." (emphasis added).

From Worth's "medium" and "slight," to the BESL's "very slight," by August 12 it took "no pressure at all" to die from the evil light.

Carlton was insistent: "This one is just as dangerous as the one that killed the man," he said.

Schmeltzer closed the conversation by saying finally, "The 15-B group is looking into all of the pliable sheaths and doing an engineering evaluation of them."

What came of that evaluation? Hosmer revealed something of what it was like: "You know, when we were down in the lab, looking at other products with people who were actually doing the testing, and we would just say, listen, how do these things stack up? And they'd say, well, I've pushed it with my thumb and I've sat here and tried to expose those contacts and it's a hell of a lot harder to do it than it is with the A.K. light. And phrases like 'a hell of a lot harder to expose the contacts' turned out to be the criterion by which we judged whether or not something was going to be actively pursued. Those are not exactly concrete words,

technically, if you know what I mean. But that's about what it boiled down to. . . . I always had the A.K. light on the bottom and everything else seemed just a little bit better. How much better I don't know. But we let the A.K. light be the bottom line for Section 12 *because we had no other way of knowing what is a Section 12*" (emphasis added).

The commission did locate three other small companies in the same Brooklyn neighborhood as A.K. to whom Meltzer had sold handles, and pressed them into recalls under the same finding of imminent hazard and the threat of bringing them in as defendants along with the other vendors. But no action was ever taken against any other trouble light. "The thunder was going out of the case," explains Hosmer, "and we didn't want to bring in the whole world."

CATCH 12: IF THE DANGER IS "IMMINENT,"
WHO HAS TIME FOR RESEARCH

Time was a factor constantly on the commission's mind. In his debate with members of the advisory committee over the other lights, Schmeltzer at one point argued simply, ". . . the research and the time would lose the imminence."

This argument has been made by the commission's lawyers in other cases, too. By this logic, the degree of a hazard -- at least if it is serious enough to be "imminent" -- is not a function of the product itself but of the commission: The CPSC creates an "imminent hazard" by how quickly it responds to a problem.

Conversely, although a product hazard may not change at all over time, if the commission doesn't act on it summarily, it automatically is transformed into a hazard of lesser degree. The commission's lawyers reluctantly but successfully argued for example, that the Kemp Shredder, a lawn care machine, could not be declared an imminent hazard, solely because the commission had been deliberating on it for almost a year.

The implications of the argument are that -- as Schmeltzer argued to the advisory committee -- because of the time needed to establish a broad and effective generic hazard definition and enforcement across a product field, there can never be a generic imminent hazard, however serious and dangerous it is from a practical standpoint.

Ron Eisenberg, CPSC director of public affairs and designer of the advertising program the commission wanted, put it this way: "It's one thing to say that a product is a danger.

It's another to say it killed somebody -- in terms of communicating it. Much more effective."

In such a policy vacuum, the commissioners opted for an ego-satisfying game of high-stakes poker with industry. They were clearly taken by surprise when the vendors, after immediately volunteering to cease all manufacture, distribution, and retailing by recall and refund, offered to undertake a massive national public relations campaign in lieu of the far more expensive paid media effort designed by Eisenberg.

The vendors realized that the purpose of the commission's strategy was to set a precedent. But the vendors also realized that the weakness of the commission's strategy was its compulsive speed. In response, the vendors quickly admitted that the product was a hazard, but were careful not to admit that it was an imminent hazard, preserving their option of challenging the commission's access to the power of the court if Judge Hart were to order the paid advertising.

Next, they pushed ahead with their public relations campaign voluntarily, while the commission remained petulant and pre-occupied with "the case" and the attendant court proceedings in pursuit of the precedent. By this strategy the vendors hung the commission on its own petard by appearing to the court to have more real interest in speed than the commission. It worked. The commission lost "the case."

WHAT IS A SUCCESSFUL RECALL?

The most revealing aspect of the litigation phase of the trouble light case is that whenever the vendors asked the staff of the commission what its definition of a successful public warning was, the staff was unable to respond. The commission was unable to say explicitly: "An imminent hazard is of such danger to the public that the CPSC finds it necessary to require that evidence of x percent return is necessary for us to have met our responsibility under the law. The hazard will remain imminent until that goal is met, and we ask the court to order that by whatever means necessary the vendors meet that goal within x months."

It all led to a "case" that lost on the only point on which it was challenged, and may well have collapsed had it been challenged on the question of the "imminence" of the hazard. But Jack Meltzer couldn't afford to challenge that point, especially since the outcome might only have changed the level of hazard from "imminent" to "substantial." Tom Burke, counsel for the Association of General Merchandising Chains (the organization that represented the retailers

in the vendors' public relations campaign), was asked if a retailer or distributor would ever challenge the commission once it had used its emergency power to declare a product imminently hazardous. "It would have to be a rare day," he said, "because it would just be too expensive to them in terms of good will to buck that kind of publicity, even if it was wrong."

Yet spokesmen for several of the other vendors made it clear that if the court had ordered a paid media campaign, it would have been that kind of rare day, and they would have attacked the finding of imminence.

But, Hosmer, for one, agrees with Burke's view of the situation: "That's the power behind our office and Sections 15 and 12," he said. "They're put in an untenable position. It's a no win situation."

But is this in the interest of justice? "Absolutely not!" Hosmer shot back. "The only way to mitigate this is to have a commission that will take into consideration the inequitable position of industries."

But apparently the commission does this already, in a manner of speaking. "If it had been Sears," Hosmer said, "we would have handled it in a low key. We got lucky, I guess. If it had been Sears we would have met them more than halfway."

"The sad part about the A. K. case," Hosmer continued, "is that there wasn't a technical staff challenging the hazard. Had the commission taken some lumps on the technical information on the trouble light, it would have been very good for them in the long run. They would have been able to say to engineering: 'A four sentence memo is not enough.' Our judgment needs to be tested; that's what the legal process is about, to make sure we don't abuse that subjectivity."

Why the commission can't say such things to its engineers now is unclear. But a remark made by product safety expert Richard Jacobs, of the New Jersey Institute of Technology, gives a clue. "Dick Simpson is a great guy. But he doesn't give direct orders. That's one of the big problems of the commission."

Whether the lack of administrative leadership has its source at the top or in the Bureau of Engineering Science, its lack is clear, apparently chronic, and no longer either explainable or excusable by the newness of the commission. "It has worried me since I came here," said George Annikes recently, "that we don't have hard engineering procedures."

Several months after the court action on the trouble light was ended, Chairman Simpson was asked about the progress of the commission's only imminent hazard. Simpson replied that about 10 percent of the lights had been returned, the commission was satisfied, and the case was closed. But no one at the commission has inspected the retail outlets, where they would find that many of the trouble lights returned were not A.K.'s at all. Robert Stovall, for example, manager of the Woolco store where Robert Jones bought his fateful light, said: "Only about a third of mine were the right ones. People dug them out of everywhere. Some were so rusted they would never work. I've got every kind of trouble light that was ever made. As a retailer, I'm in no position to give people an argument."

The trouble light case apparently is permanently closed. Section 12 requires that upon a finding of imminent hazard the commission must institute the promulgation of a mandatory standard for the product class "when appropriate." But one year after its only Section 12 case to date, and in the presence of clear evidence that the product class is in need of standards, no such initiative under the act has been taken.

With the trouble light case closed, however, the Section 15 Group pressed for and won its spoils. Last February, the group officially became the Office of Product Defect Identification (OPDI).

ANOTHER DEATH

Closed cases apparently mean closed minds. In June, Jim Hosmer was notified of another trouble light death. A month later, when asked whether he had made a positive identification of the make of the light and if the commission had investigated the facts of the death, he said no.

Why not? "Well, because I think it's a light we looked at and thought was okay." But what about positive identification? What about new or unnoticed hazards? What about the death? "I guess that's right," Hosmer replied, "God!"

At this writing no investigation of the death has been initiated by the commission. Some facts about it should be of compelling interest to the commission, however. John Rae, 57, was in a hot attic in Hammond, Indiana, on August 2, 1973. He was found lying across conduit pipe, electrocuted. The trouble light he was using had its plastic handle pulled away from the metal hood. And when one holds this light, the tiny blackened spots on the hood clasp and the exposed

bulb socket can be matched (similar to the burns in Dr. Mann's description of the light that was with Robert Jones).

A simple scenario: A PVC handle softens in the heat of an attic in Florida in October, Indiana in August, allowing the metal hood to separate easily from the too-small and too-soft lip on the handle as the light is being hooked into place. Contact with the exposed bulb socket turns the metal hood into a live contact with thousands of times the surface area of a receptacle prong.

Was it noticed? Was it noticed but tolerated in ignorance of the danger? Was it calculated but, in the desire to get done with the hot job and get out, tolerated? Whatever the imminent hazard was for James Worth, Brent Bradford, George Annikes, James Hosmer, and the commissioners at the CPSC in 1974, it was something different for Robert Jones and John Rae in 1973.

If the commission ever investigates the case of John Rae, it will find that the Indiana trouble light is made from an A.K. handle, one that had been sold to another company. But what would be the attention-getting power of a second imminent hazard designation for a product whose first imminent hazard was closed out with 90 to 95 percent of the unsafe items still outstanding?

What comes to mind is a windy street corner in New York in early December 1974. Richard Simpson was asked about the trouble light case. "The trouble light case?" he said smiling. "That was a case of no engineering." He was talking about the A.K. Electric Company of Brooklyn. But the statement appears to be equally appropriate for his own commission.

Editor's note: The 1975 December New Engineer printed letters from readers in response to this story which appeared in the 1975 September New Engineer. The letters are included after Exhibit 5 of this case history.

Chronology

1972	A.K. Electric's trouble light design copied from Miller Electric.	July 25	Section 15 Group issues recall and public notification plan calling for national media campaign to be paid for by vendors.
1973			
May—December	A.K. takes shipment of PVC handles from Dumar Industries and manufactures 180,000 trouble lights.		Commission executive session concurs with Section 15 Group recommendation that product is an imminent hazard.
October 24	Robert Edward Jones electrocuted while using an A.K. trouble light.	July 26	Commission issues press release warning of hazard and announcing commission decision.
1974			
May 29	Applied Research Lab of Florida completes failure analysis of A.K. light, ordered on behalf of Jones's widow, and makes formal complaint to CPSC via toll-free "hotline."	July 29	Jack Meltzer, president of A.K., told of Section 15 Group requirement of voluntary mass media campaign. He replies that he is financially unable to comply.
June 19	Complaint referred to the In-Depth Investigation Section, CPSC, Washington.	July 30	Section 15 Group contacts major vendors of A.K. light and requests meeting on July 31 to resolve public notification question.
June 24	Investigation assigned to G. Brent Bradford of Atlanta regional office of CPSC.	July 31	Vendors meet with commission. Given 24 hours to present commission with acceptable mass media paid advertising program, including paid prime-time TV. Vendors volunteer cessation of all manufacture, distribution, and sales of trouble light.
June 27	Bradford conducts one-day investigation.		
July 8	Bradford report received by In-Depth Investigation Section, CPSC, Washington.		
July 11	Copy of Bradford report goes to both CPSC Bureau of Engineering and Section 15 Group in Washington.	August 1	Vendors refuse paid media campaign. CPSC in executive session rejects vendors' offer of national public relations program; informs vendors that it will go to court.
July 17	Sample of A.K. light from Atlanta regional office received by Bureau of Engineering Science Laboratory, CPSC, Washington.	August 9	CPSC files complaint in U.S. District Court, Washington, D.C. Chief Judge George Hart orders parties to negotiate.
July 19	Memorandum issued by Bureau of Engineering Science Laboratory concludes that the A.K. light is "imminent hazard."	August 12	CPSC Product Safety Advisory Committee briefed on A.K. case. Discusses failure of CPSC to act on other known trouble lights with same hazard as A.K. light.
July 22	A.K. Electric contacted by telephone by Section 15 Group and informed that CPSC staff will recommend declaration of imminent hazard for A.K. trouble light.	August 15	Commission staff and vendors meet to negotiate. Meeting ends in stalemate.
	Action Industries, largest distributor of light, informed of staff recommendation.	August 29	Parties return to court. Judge Hart permanently enjoins distribution of A.K. trouble light as an imminent hazard. Refuses to order vendors to conduct paid media campaign. Personally calls television networks, which broadcast coverage of hazard demonstration by commission chairman.
	Section 15 Group writes memo to CPSC executive director recommending immediate public warning under emergency powers of Section 12, Consumer Product Safety Act.		

LIST OF PEOPLE MENTIONED
in THE TROUBLE LIGHT RECALL

George Annikes, Head, Special Engineering Studies
Consumer Product Safety Commission

Carl Blechschmidt, Head of Group 15, Consumer Product
Safety Commission

G. Brent Bradford, Consumer Safety Officer in the Consumer
Product Safety Commission

Tom Burke, Counsel for Association of General Merchandising
Chains

Sholom Comay, representing the major distributor of the
A.K. trouble light

E. E. Carlton, principal safety engineer for the electrical
unit, San Francisco Division of Industrial
Safety

Alfred B. Castle, Jr., director of the Division of Engineer-
ing Laboratory Operations of the Consumer
Product Safety Commission

Ron Eisenberg, director for Public Affairs, Consumer Product
Safety Commission

Earl Gershenow, lawyer, Consumer Product Safety Commission

Herbert Greenstone, lawyer, Newark, New Jersey

John O. Hayward, attorney, president of Personal Injury
Research Associates, Cambridge, Mass.

George Hart, U. S. District Court Judge

James Hosmer, member of Section 15 Group (now the Office of
Product Defect Identification) in the Bureau
of Compliance of the Consumer Product Safety
Commission

Eugene Heinrich, attorney in Miami, Florida

Richard Jacobs, product safety expert, New Jersey Institute
of Technology

Jane Jones, wife of Robert Jones, the victim of the accident

Robert Edward Jones of Lauderdale-by-the-Sea, Florida,
electrocuted by an accident involving a
trouble light

Bill Kitzes, member of the "Section 15 Group" (now the Office
of Product Defect Identification) in the
Bureau of Compliance of the Consumer Product
Safety Commission

Sheldon London, spokesman for the National Retail Hardware
Association

Arthur Lubell, representing A.K. Electric Company

Geoffrey Mann, M.D., medical examiner in Broward County,
Florida

Jack Meltzer, president of A.K. Electric Company of Brooklyn,
New York.

John Rae, electrocuted in an accident involving a trouble
light in Hammond, Indiana
Sheldon Roe, engineer at Applied Research Lab of Florida
David Schmeltzer, lawyer, Office of the General Counsel of
the Consumer Product Safety Commission
Richard Simpson, Chairman of the Consumer Product Safety
Commission
Robert Stovall, Manager, Woolco store
Pat Thompson, NBC radio network, "Today" show
Robert Walsh, police officer, Lauderdale-by-the-Sea, Florida
Robert Worth, president, Applied Research Laboratory of
Florida



EXHIBIT 3

Typical Trouble Light
with Hard Rubber Handle

THREE DEGREES OF HAZARD

There are three degrees of hazard that the CPSC is empowered to define and regulate: "unreasonable risk," substantial product hazard," and, the most severe, "imminently hazardous consumer product."

In all cases the commission can place sanctions on all levels of the product's vending. For unreasonable risks, under Section 8 of the Consumer Product Safety Act of 1972, the sanction can include a mandatory design standard for the product or an outright ban, but only after a lengthy process of review.

For substantial hazards, under Section 15 of the act, sanctions cannot be imposed until after a public hearing on the product, following due notice to the vendors and public. The commission can order public warning, recalls and refunds, as well as penalties and product redesign.

But only under Section 12, after a finding by the commissioners of imminent hazard, can the commission give summary national warning of a product's hazard and ask the court to order immediate temporary restraint of the product's distribution and sale. And only under Section 12 do the federal courts have the power to order vendors to do what the commission wants them to do in order to remove a product from the public way.

-R.McL.

It's Black! It's Red! Er, It's Dark Red?

The public battle in the trouble light case boiled down to whether industry would be forced to pay for an advertising campaign to warn Americans of the light's alleged hazard. This was serious business. But in retrospect it also had moments of humor. The richest came when the commission masterminds kept losing their grip on the "imminently hazardous" product itself.

Take Ron Eisenberg, CPSC's Director for Public Affairs, and David Schmeltzer of the commission's Office of General Counsel, the man who argued the commission's case in court. They ought to know an A.K. Electric trouble light when they see one, right? Well, that's what they thought, too. So you can imagine the depth of their indignation when, in the middle of the public relations campaign that industry was conducting on its own in lieu of paid advertising, Eisenberg and Schmeltzer actually found what they thought was one of the A.K. trouble lights still for sale in a downtown Washington hardware store. If this wasn't proof of the need for court-ordered paid advertising, nothing was.

Flourishing the light, they entered the major industry-commission negotiating session. "I don't know what comprises your membership," Schmeltzer cried at Sheldon London of the National Retail Hardware Association, who was arguing on behalf of industry's PR approach, "but this morning at 9:30 we went to a hardware store and bought this *very* light!" The offending lamp was left conspicuously on the table, raised on

a dais at the front of the room, from which the commission staff members had chosen to hold their ground. And it was waved as an example at every opportunity.

Finally, in mid-afternoon, after one such performance led by Eisenberg, the indulgence of the vendors gave way. Arthur Lubell, representing A.K. Electric, manufacturer of the one and only imminent hazard, rose and said firmly, "That is not our lamp, sir!" Silence from the dais. It was finally broken by Sholom Comay, representing Action Industries, the major distributor of the A.K. product, who added quietly, "The one you have on the table is a *different* lamp." It wasn't mentioned again.

But the best performance of all was by Earl Gershenow, one of the lawyers who wrote the commission's brief in the case, and who, with Schmeltzer, was detailed in the midst of the action to brief the commission's Product Safety Advisory Committee on what was happening. Schmeltzer had already made the mistake of leading off the briefing by using somebody else's trouble light to demonstrate the supposed death hazard. As a result the two hapless lawyers were being unmercifully pressed by the committee members as to why they were picking on A.K. alone if there were other lights on the market that were just as deadly. Schmeltzer and Gershenow tried to explain that the reason the media campaign was needed—the whole basis, in fact, of the commission's case—was that the A.K. product had no brand name, was in no way

distinctive and was, well, nondescript; the commission, for its part, had had difficulty describing it in its press releases and publicity.

Interested in this line of argument, a member of the advisory committee expressed concern about all the owners of safe trouble lights who were now undergoing needless mental torture because the commission's publicity gave them no way of knowing if their light was actually a killer.

The lawyers didn't understand. Well, said the advisory committee member, he meant all those people who owned *red* trouble lights.

The lawyers were still confused. Finally the member said simply, "I couldn't find anything in any of the documents or in the releases that said it was *black*." The A.K. light is, in fact, black. No doubt about it. Black.

But Gershenow was not ready to concede. "The handle," he began tentatively, "my recollection is . . . was not *completely* black." And then, warming to his purpose, he plunged boldly ahead. "In fact, I am not so sure you could describe it as either black or red or dark red. It was one of those things as to which people would differ as to what to call it." Finally, in triumphant conclusion, referring to the member's suggestion of the word black, Gershenow said, with a conviction produced by years of legal training and rigorous government service, "I don't think you can really get anything that meaningful from that type of description."

—R.McL.

The following letters appeared in the 1975 December New Engineer in response to the article on the trouble light in the 1975 September New Engineer:

LETTERS

This light killed . . .

Robert McLaughlin's article about the Consumer Product Safety Commission's treatment of our trouble light contains what we feel is an error. At the pretrial examination in the court case concerning John Rae's death, I testified that in my opinion the trouble light presented in evidence contained no components of our manufacture.

Jack A. Meltzer

President
A.K. Electric Corp.
Brooklyn, New York

Robert McLaughlin replies: The attorney handling the case for John Rae's family confirms that the light in question was of almost identical design to A.K. Electric's product but was not manufactured by A.K. Electric. The identification in the article was based on evidence when the article was written. I personally examined the light in question, and it appeared to be the A.K. Electric product. In checking with Mr. Meltzer at the time, he told me the trouble light in question was made by his firm. He had assumed this before actually examining it, however. Given such uncertainties in identification, it is no wonder that the Consumer Product Safety Commission's recall of the offending trouble lights was unsuccessful. The situation further underlines one of the questions raised in the article: Why did the commission single out A.K. Electric, when so many similar products were also on the market?

I have just read, and reread, your article about the Consumer Product Safety Commission and the trouble light. Congratulations on an extremely good job of reporting . . . detailed, searching, an almost poignant ending . . . and from perspectives seldom covered in the media.

Ross N. Faires

Arvin Industries
Columbus, Indiana

Robert McLaughlin's article on the recall of trouble lights (September) suffers from the same fuzzy-mindedness as did the affair itself—lack of a clear idea as to what is really important in deciding the safety of a product. What is not important is how a particular victim died or, even worse, how some bureaucrat subsequently acted. The entire controversy should have centered on whether there really was a shock hazard in normal use.

To focus on reconstructing the past, instead of trying to preconstruct the future, is the knee-jerk reaction of lawyers, accountants, and bureaucrats. Let them play their proper role in society. Certainly that role is not to decide which technological devices are clearly dangerous.

It would have been more journalistically honest to make a partisan plea for engineering work to be done by engineers.

Donovan Young, Ph.D., P.E.
George Institute of Technology
Atlanta, Georgia